

SECTION 13 VARIANCES

13.1 Authorization to Grant or Deny Variances:

The Commission may authorize a variance from the requirements of this regulation when it can be shown that because of special and unusual circumstances related to a specific piece of property, strict application of the regulation would cause an undue or unnecessary hardship. No variance shall be granted to allow the use or development of property for a purpose not authorized within the District in which the proposed development would be located. In granting a variance, the Commission may attach conditions it finds necessary to achieve compliance with the criteria for granting variances.

13.2 Criteria For Granting a Variance:

A variance may be granted only upon finding compliance with all of the following criteria:

1. Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same district or vicinity and that result from lot size or shape, topography, or other circumstances over which the owners of property have had no control since enactment of this regulation.
2. The variance is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same district.
3. The variance would not be materially detrimental to property in the same district or vicinity in which the property is located.
4. The variance requested is the minimum variance that would alleviate the hardship.
5. The variance requested conforms to the objectives of the development plan and the intent of this regulation.

13.3 Procedure:

1. Written applications for variance shall be filed with the Gallatin County Planning Office, along with the appropriate fee for the purpose of defraying expenses incidental to proceedings. An application shall not be regarded as having been filed until the fee is paid.

2. The Commission shall cause to be made such investigation of facts bearing on the application in order to provide the necessary information to assure that the action on each such application is consistent with the intent and purpose of this regulation and the development plan.

13.4 Hearing and Notice:

1. There shall be a hearing for each application. Testimony shall be taken by the Commission from persons interested in the application and from the Zoning Enforcement Agent.
2. Notice of hearing shall be published once in a newspaper of general circulation within the county at least fifteen (15) days prior to the hearing date. In addition, the Zoning Enforcement Agent shall send a certified letter to record owners of property adjoining a proposed variance.

13.5 Approval:

In approving an application for a variance, the Commission may designate any conditions that will secure protection for the public health, safety, and general welfare and shall find the request to meet the criteria set forth in Section 13.2. Any approval under this section shall be subject to any terms and conditions required by the Commission.

13.6 Revocation and Modification of Variance:

A variance may be revoked or modified under the same circumstances and procedures specified for the revocation or modification of a conditional use permit in Section 12.8.

SECTION 14 LAND USE PERMITS

14.1 Procedures for Obtaining Land Use Permits:

1. No structure shall be built, moved or structurally altered until a land use permit has been issued under this Section.
2. Land use permits shall be issued only for uses in conformance with this regulation and the conditions and terms of a conditional use permit if a conditional use permit is required. No land use permit shall be issued until time for appeal on a conditional use permit or variance has elapsed and all appeals are finally decided.
3. Land use permits shall be in writing and shall be in the form specified by the Commission.
4. An application for a land use permit shall be filed with the Gallatin County Planning Office. Land use permits may be issued by the Zoning Enforcement Agent. All land use permit applications must be complete before the Zoning Enforcement Agent is required to consider the permit. An application is complete when it contains all of the information necessary for the Zoning Enforcement Agent to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this regulation and the development plan.
5. If an application for a land use permit is denied by the Zoning Enforcement Agent, the applicant may apply for a variance or appeal to the Commission.
6. Where new sanitary facilities or the extension of the existing sanitary facilities are contemplated, a land use permit shall not be issued until the applicant has first obtained a sewer permit from the City/County Environmental Health Department or approval of sanitary facilities from the Montana Department of Health and Environmental Sciences, whichever is appropriate.
7. Site plan required: For new commercial and industrial developments, a detailed site plan and building elevations, drawn to scale and reflecting the accurate dimensions of the buildings and property, is required for submittal with the land use permit application. The site plan shall demonstrate conformance with height regulations, property development regulations, sign regulations, parking regulations, design requirements, and any other requirements of this regulation and the development plan.

14.2 City of Bozeman Building Permit

Since the entire Zoning District is located within the City of Bozeman building permit jurisdictional area, all development is also required to obtain a building permit from the

City of Bozeman Building Department. Therefore, any land use permit application must also be accompanied with a receipt of payment for the City of Bozeman building permit.

14.3 Time of Construction:

After a land use permit is issued, any construction activity shall be limited to the hours of 7:30 a.m. to 8:30 p.m.

14.4 Certificate of Compliance:

A certificate of compliance shall be issued by the Zoning Enforcement Agent to ensure that all exterior construction has taken place in accordance with the approved land use permit, including any conditions imposed upon the development (see Section 14.6.3 for items covered under exterior construction). This inspection shall be made one year after the date of issuance of the land use permit, or sooner if an inspection is requested by the developer. Any part of the development found not to be in compliance with the approved land use permit shall constitute a violation of this regulation.

14.5 Conformance:

No land use permit shall be issued unless in conformance with this regulation. Permits issued on the basis of plans and specifications approved by the Zoning Enforcement Agent only authorize the use, arrangement, and construction set forth in the approved plans and applications and no other use, arrangement, or construction. A use, arrangement, or construction at variance with that authorized shall constitute a violation of this regulation.

14.6 Expiration of Permits:

1. A land use permit shall expire if the building or work authorized by the permit has not commenced within six (6) months from the date of the issuance of the permit or if the building or work authorized by the permit is suspended or abandoned at any time after the work is commenced for a period of 120 days.
2. After a land use permit has expired, no work can be recommenced until a new permit is obtained. The fee for a new permit shall be one-half (1/2) of the amount required for the original permit, provided that no changes have been made or will be made in the original plans and specifications for the work and that abandonment has not exceeded one year.
3. All exterior construction shall be completed within one year of the date of issuance of the land use permit. This includes the construction of the exteriors of all structures, the construction of all required parking, and the placement of all required landscaping and screening. This provision shall not apply to signs where a separate sign permit is required.

SECTION 15 ADMINISTRATION

15.1 Employees and Officers:

1. The Commission is authorized to appoint and hire employees and officers, including a Zoning Enforcement Agent, as is necessary to administer and enforce this regulation.
2. The Zoning Enforcement Agent may be an employee of Gallatin County, and if so, shall perform the duties under this regulation without remuneration in excess of the County salary.

15.2 Duties of the Zoning Enforcement Agent:

- 1 The Zoning Enforcement Agent shall issue all land use permits and review all applications for conditional use permits, variances, rezoning requests and amendments to this regulation.
2. If the Zoning Enforcement Agent finds that this regulation, permit, or condition is being violated, the Agent shall give written notice to the person responsible for the violation, indicating the nature of the violation and requesting the remedial action to be taken to correct or abate the violation.
3. If the Zoning Enforcement Agent finds a violation the Agent may request the discontinuance of the illegal use of land, buildings, or structures; removal of illegal buildings, structures or additions, alterations, or structural changes; or discontinuance of any illegal work being done.
4. The Zoning Enforcement Agent may take any other action authorized by this regulation to enforce the provisions of this regulation or prevent the violation of its provisions.

15.3 Appeals from Decisions of Zoning Enforcement Agent:

1. An appeal from a decision of the Zoning Enforcement Agent may be made to the Commission.
2. An appeal shall be in writing and shall be filed with the County Planning Office within ten (10) working days after the decision which is appealed.
3. A public hearing will be held on an appeal by the Commission if the matter appealed was required by this regulation to be decided after holding a public hearing.

SECTION 16 FEES, CHARGES AND EXPENSES

- 16.1 All applications for permits, zone changes, conditional uses, or variances shall be accompanied by the applicable fees, which shall be established by the Commission by resolution after public notice and hearing.
- 16.2 Fees, charges, and expenses are not refundable.
- 16.3 The land use permit fee for projects where construction has already commenced without first securing a land use permit shall be doubled.

SECTION 17 COMPLAINTS AND INVESTIGATIONS

- 17.1 Any person may file a written complaint with the Commission or the Zoning Enforcement Agent alleging a violation of this regulation.
- 17.2 Upon receipt of a complaint, or upon its own initiative the Zoning Enforcement Agent shall record the complaint, investigate the complaint, and take whatever action the Agent considers appropriate.

SECTION 18 ENFORCEMENT AND PENALTIES

18.1 Criminal Penalty:

A violation of this regulation, a permit issued under this regulation, any condition imposed through the authority of this regulation, or any variance granted through this regulation shall constitute a misdemeanor. A person convicted of a violation under this Section shall be fined not more than \$500 or imprisoned for a term not to exceed six (6) months, or both. Each day of violation shall constitute a separate offense and be punishable as such.

18.2 Injunction:

Upon order of the Commission, the County Attorney may bring an action to enjoin violators of this regulation.

SECTION 19 MINIMUM REQUIREMENTS

- 19.1 In the interpretation and application of this regulation, the provisions of the regulation shall be held to the minimum requirements adopted for the promotion of the health, safety and general welfare of the District.
- 19.2 Wherever the requirements of this regulation are at variance with the requirements of any other lawfully adopted rule or regulation, the most restrictive, or that imposing the higher standards, shall govern.

SECTION 20 AMENDMENTS AND CHANGES

- 20.1 This regulation may be amended whenever the public necessity and convenience and general welfare require such amendment, according to the procedure prescribed by law, and this regulation.
- 20.2 An amendment may be initiated as follows:
1. A land owner(s) within the District may file a petition with the Zoning Enforcement Agent requesting an amendment. The petition shall be signed by the petitioning land owner(s).
 2. The Gallatin County Commission or the Zoning District #1 Planning and Zoning Commission may initiate an amendment through a resolution of intention.
- 20.3 An amendment shall not become effective until a hearing is held before the Commission. Notice of the hearing shall be given in a newspaper of general circulation in the County and be posted at the following four (4) locations within the district, not less than fifteen (15) days prior to the date of hearing:
- Corner of Valley Drive and Babcock Street.
 - Corner of North Western Drive and Babcock Street.
 - Corner of North Western Drive and Durston Road.
 - Corner of West Main Street and Yerger Drive.

SECTION 21 INVALIDATION

- 21.1 If any Section or part of this regulation or any attachments or amendments hereto is for any reason held to be invalid, the remaining portions of this regulation shall be valid and effective.

SECTION 22 ADOPTION

Zoning District No. 1 Planning and Zoning District was created on the 18th of May 1970, by the Gallatin County Commission. This revised regulation was adopted on the 9th of February 1995, by the Planning and Zoning Commission, and amended thereafter. The regulation has been revised consistent with the history of amendment listed below.

Planning and Zoning Commission:

Shelley Vance, Chairman

Jeffrey Krauss, Member

William A. Murdock, Member

Phil Olson, Member

Jennifer Smith Mitchell, Member

Gallatin County Commission:

William A. Murdock, Chairman

Phil Olson, Member

Jennifer Smith Mitchell, Member

ATTEST:

Shelley Vance, Clerk & Recorder

History

Amended by Resolution No. 1995-02 of the Planning and Zoning Commission on March 9, 1995.

*Amended by Resolution No. 1999-06 of the Planning and Zoning Commission on May 13, 1999,
and by Resolution No. 1999-23 of the Gallatin County Commission on May 25, 1999.*

This revised zoning regulation was adopted on the 9th day of February, 1995, and amended on March 9, 1995 (Resolution 1995-2).

ZONING DISTRICT #1 PLANNING AND ZONING COMMISSION

Shelley Cheney, Chairman,
County Clerk and Recorder/Surveyor

Kris Dunn, County Commissioner

NOT PRESENT
Jane Jelinski, County Commissioner

Phil Olson, County Commissioner

Stan Hughes, County Treasurer/Assessor